is left free to place the judicial power in such courts or tribunals as it chooses.

M. C. L.

EVIDENCE: IMPEACHMENT OF ONE'S OWN WITNESS: PRIOR INCONSISTENT STATEMENTS.—That a party cannot impeach the testimony of his own witness by the introduction of prior inconsistent statements is a rule established by the decided weight of authority at common law.[1] To this general rule there appears to be an exception in the case of a witness whom the party is under the necessity of calling, such as the subscribing witness to a will.[2] There is also an exception under some other circumstances, as for instance, where the calling party has been surprised, entrapped, or misled, or where the witness proves to be hostile or adverse.[3] By statute California has provided that a party may show that the witness has made, at other times, statements inconsistent with his testimony in court.[4] But despite this broad provision, the California courts, influenced, as they have been in interpreting other code sections, by the rules of common law, have adopted the limitation that surprise and damage must be shown to allow the impeachment.[5] Under the case of Zipperlen v. Southern Pacific Co.[6] and other similar decisions it is not enough that a witness has simply failed or refused to testify to all that was expected or desired by the party calling him, to allow the introduction of former declarations.[7] The witness must affirmatively testify against the party calling him and mere failure of memory or refusal to testify[8] is not sufficient to open the door. The testimony must be contrary to that reasonably to be expected in order to warrant the introduction of other statements. Of course such statements when allowed to discredit the witness can be considered for the purpose of impeachment only, and are hearsay for all other purposes. They do not

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[1] Coulter v. American Merch. U. Ex. Co. (1874), 56 N. Y. 585; Moore v. Chicago etc. R. R. Co. (1881), 59 Miss. 243; Stearns v. Merchants Bank (1866), 53 Pa. St. 490; Wigmore on Evidence, § 908, Jones, Commentaries on Evidence, § 853.

[2] Richardson v. Allan (1818), 2 Stark. 335, 3 Eng. C. L. 433; Dennet v. Dow (1840), 17 Me. 19; Thompson v. Owen (1898), 174 Ill. 229, 51 N. E. 1046; Whitman v. Morey (1885), 63 N. H. 448, 2 Atl. 899.

[3] Wigmore, Vol. II, § 904.

[4] Cal. Code Civ. Proc., § 2049.

[5] People v. Kruger (1893), 100 Cal. 523, 35 Pac. 88; Hyde v. Buckner (1895), 108 Cal. 522, 41 Pac. 416; Thiele v. Newman (1897), 116 Cal. 571, 48 Pac. 713; People v. Crespi (1896), 115 Cal. 50, 46 Pac. 863; People v. Cook (1905), 148 Cal. 334, 83 Pac. 43; Estate of De Laveaga (1913), 165 Cal. 607, 133 Pac. 307; Zipperlen v. Southern Pacific Co. (1907), 7 Cal. App. 206, 93 Pac. 1049.

[6] (1907), 7 Cal. App. 206, 93 Pac. 1049.

[7] Bollinger v. Bollinger (1908), 154 Cal. 695, 99 Pac. 196, People v. Mitchell (1892), 94 Cal. 550, 29 Pac. 1106; People v. Crespi (1896), 115 Cal. 50, 46 Pac. 863.

[8] People v. Creeks (1904), 141 Cal. 529, 75 Pac. 101.

constitute evidence against the opposing party of the facts stated in the prior declaration.[9] They have no force in making an affirmative case for the party, nor in corroborating the testimony on the main issue.[10]

In the case of *Coos Bay Manufacturing Company v. California Selling Co.*[11] the plaintiff was allowed to impeach the testimony of his own witness, the president and principal stockholder of the defendant corporation, by introducing a prior writing in which he had given other and contradictory evidence to that elicited from him during the trial. In justifying this ruling the court suggested that this was such a witness as the plaintiff might feel obliged to call. The witness here was not, however, one whom the law obliged the plaintiff to call, although he was an important witness to prove the point in controversy. It is also obvious that there was no great surprise present on the part of the plaintiff, for it was to be expected that one so vitally interested in the welfare of the defendant corporation as this witness would not be unlikely to testify adversely to one seeking to subject it to a pecuniary liability. This, then, may be the forerunner of a line of decisions more in accord with the spirit of the California code section above referred to, which is silent as to surprise and damage. The principle at the basis of this ruling is really that here is a witness like a party opponent, or one obviously too hostile to be considered as one's own witness and within the rule which forbids his impeachment by prior inconsistent statements; that in effect, at least, his statements amount to admissions.[12] But whether the statements are technically admissions or not, the principal case tends to a more logical application of the rule indicating that where the reasons for the rule cease to exist the rule should come to an end.

M. P. G.

MUNICIPAL CORPORATIONS: CHARITIES: POLICE POWER.—The attempt of the city council of Los Angeles to control all charities and charitable enterprises and to place them on a basis of coldly calculating and scientific efficiency has received a severe rebuke in the opinions rendered in the case of *In re Dart.*[1] The opinion of Mr. Justice Henshaw is written in his best and most picturesque vein. Being backed up by sound law, we

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[9] Thiele v. Newman (1897), 116 Cal. 571, 48 Pac. 713; Hyde v. Buckner (1895), 108 Cal. 522, 41 Pac. 416.

[10] In re Kennedy (1894), 104 Cal. 429, 38 Pac. 93.

[11] (Jan. 18, 1916), 22 Cal. App. Dec. 140, 155 Pac. 817.

[12] Thompson on Corporations, § 1628. (It is impossible to tell in the principal case whether the president was intrusted with the management of the business so that his admissions would be binding against the corporation.)

[1] (1916), 51 Cal. Dec. 178, 155 Pac. 63.